IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9091 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

AHMEDKHAN REHMATKHAN PATHAN

Versus

STATE OF GUJARAT

Appearance:

MR DM AHUJA for Petitioner

MR UDAY BHATT, Ld. AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 28/09/2000

ORAL JUDGEMENT

The petitioner-detenu has, by filing this writ petition under Article 226 of the Constitution of India, challenged the legality and validity of an order of detention dated 27.01.2000 (Annexure `A') passed by respondent no.2 with respect to detenu in exercise of his

powers conferred upon him under Sec.3(2) of the Gujarat Prevention of Antisocial Activities Act, 1985 (in short `the Act').

2. As per the papers of grounds of detention, the petitioner-detenu is "a dangerous person" within the meaning of section 2(c) of the Act, and further that activities of the petitioner are prejudicial to the maintenance of the public order.

3. To arrive at a subjective satisfaction, the detaining authority has placed reliance on four IPC Cases referred to in the grounds of detention. On reading that grounds of detention, it appears that the detaining authority has also placed reliance on one Entry No.16/2000 made in Mehsana City Police Station of which Fax Message was sent to Kagdapith Police Station. After forming a subjective satisfaction, the detaining authority has passed an order of detention on 27.01.2000 which is challenged in this writ petition.

4. Though rule has been served on each respondent, none of the respondents has filed affidavit-in-reply in reply to this writ petition. Thus, it is clear that the respondents have not controverted the grounds of attack for challenging the order of detention and that grounds stated in Memo of grounds stated in main writ petition supported with affidavit stand as they are.

5. During the course of arguments, Mr.Ahuja, learned advocate for the petitioner has argued that the detaining authority has not furnished the copy of Entry No.16/2000 dated 11.1.2000 made in Mehsana City Police Station of which fax message was sent to Kagdapith Police Station. Thus, by non furnishing the copy of said entry, the detenu has not been given the papers referred to in the grounds of detention and therefore his valuable right given in Article 22(5) of the Constitution of India is violated. For this he has cited an authority of Smt.Icchu Devi Choraria Vs. Union of India and others reported in AIR 1980 SC 1983 wherein it has been specifically held by the Hon'ble Supreme Court that, if there are any documents, statements or other materials relied upon in the grounds of detention, they must also be communicated to the detenu, because being incorporated in the grounds of detention, they form part of the grounds and the grounds furnished to the detenu cannot be said to be complete without them. In the present case, the detaining authority has not supplied all the copies of the documents to the detenu which are referred to in grounds of detention and thereby his valuable right has

been denied and therefore the order of detention is prima facie bad in law, and the same is required to be set aside.

6. In view of discussion made hereinabove, this writ petition is allowed. The order of detention which is challenged in this Special Civil Application is bad in law and same is required to be quashed and set aside. Accordingly, the detention order dated 27.01.2000 passed by respondent No.2 in respect of petitioner is hereby quashed and set aside. The detenu is ordered to be released forthwith, if he is not required to be detained for any other criminal case or any other criminal proceeding. Rule is made absolute. Direct service is permitted.

(H.H. Mehta, J.)

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